



CTIA

Cellular Telecommunications Industry Association

EX PARTE OR LATE FILED RECEIVED

AUG 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 15, 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

Re: Ex Parte Presentation

In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213

Dear Ms. Salas:

Today, August 15, 2001, the Cellular Telecommunications & Internet Association ("CTIA") hand-delivered the attached letter to Chairman Michael K. Powell. CTIA also hand delivered a copy of the letter to Commissioner Gloria Tristani, Commissioner Kathleen Q. Abernathy, Commissioner Michael J. Copps, Commissioner Kevin J. Martin, Julius Knapp, and John Spencer.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and its attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Sarah E. Leeper

Attachment (1)

No. of Copies rec'd 0+1
List A B C D E



CTIA

Cellular Telecommunications & Internet Association

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AUG 15 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Michael F. Altschul

Senior Vice President for
Policy and Administration and
General Counsel

August 15, 2001

The Honorable Michael K. Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation

In the Matter Of: Communications Assistance for Law Enforcement Act
CC Docket No. 97-213

Dear Chairman Powell:

On August 22, 2000, the Cellular Telecommunications & Internet Association ("CTIA") filed a petition under Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"),¹ 47 U.S.C. § 1006(c), to suspend the packet mode assistance capability deadline until the Commission had all the necessary information to make a realistic compliance determination.² Nearly one year later, the September 30, 2001, deadline is close at hand and carriers are preparing individual requests for an extension of time because there is no commercially available technology to meet the assistance capability requirements.

The September 29, 2000, TIA *Report on Surveillance of Packet- Mode Technologies ("JEM Report")*³ to the Commission recognized the diverse and varied nature of packet mode technologies and viewed the uncertain legal framework regarding packet data communications as impacting the development of clear technical solutions.

¹ Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. §2522 and 47 U.S.C. § 229, §§1001-1010).

² CTIA Petition to Suspend Compliance Date, CC Docket No. 97-213 (filed August 22, 2000).

³ Telecommunications Industry Association, *Report on Surveillance of Packet- Mode Technologies ("JEM Report")* CC Docket No. 97-213 (September 29, 2000).



TIA also found that since packet data protocols vary significantly, a single packet data standard is unlikely to work for all protocols. TIA has convened a standards effort, under TIA Subcommittee TR-45, to attempt to create an interface between the carrier and the law enforcement agency for receipt of intercepted packets. This group's work is just beginning. While carriers and manufacturers have collaborated in good faith, uncertainly about legal requirements and the pending Commission decision has delayed development of any solution other than the delivery of the entire packet in response to either a Title III or a pen register order. Thus, it is clear that there is no commercially available technology to meet assistance capabilities by the Commission's September 30, 2001, deadline.⁴

As CTIA noted in its initial petition, the only available technology to intercept packets regardless of transmission or application protocol is the "Carnivore" technology used by the Federal Bureau of Investigation (FBI)."⁵ The Commission is well aware of privacy concerns associated with Carnivore. The TIA *Report* notes the government's proposal to use Carnivore as a substitute for industry standards and law enforcement itself has reported that Carnivore is in use today.

In anticipation of Commission action on the pending CTIA Petition, the Federal Bureau of Investigation ("FBI") has just published a revision to its Flexible Deployment Plan guidelines urging carriers to submit detailed information to them by September 30, 2001, prior to seeking an extension from the Commission.⁶ The FBI is requesting that carriers voluntarily submit their packet mode deployment plans even though it knows that commercial solutions are not yet available for carriers and will not be available for some time, and that carriers cannot provide their deployment plans until their vendors have developed a compliant solution and are able to provide this information. Any reliance on a Flexible Deployment Plan in this context is obviously misplaced.

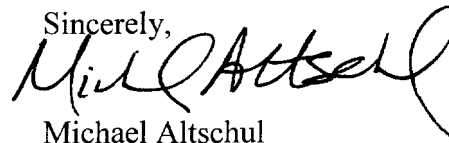
⁴ In a series of recent ex parte meetings, TIA and its members have underscored that there is no commercially available technology to meet the packet mode assistance capabilities. See TIA Notice of Ex Parte in CC Docket No. 97-213 (July 24, 2001); Lucent Technologies Notice of Ex Parte in CC Docket No. 97-213 (July 19, 2001). In the past, the Commission concluded that carriers required at least six months to "purchase, test and install [CALEA-compliant] equipment and facilities throughout their networks" once manufacturers had made such equipment and facilities available. See *Memorandum Opinion and Order*, FCC 98-223, released September 11, 1998, ¶48 (footnote omitted).

⁵ See <http://www.fbi.gov/hq/lab/carnivore/carnivore2.htm>. Carnivore was first disclosed by the FBI during the Telecommunications Industry Association (TIA) joint experts' meeting convened in response to the privacy concerns expressed by the Commission in regard to packet mode surveillance.

⁶ <http://www.askcalea.com/pdf/flexgide2.pdf>

The Congress, Commission, and the Courts have long recognized the delicate balance between privacy and the assistance capability requirements. If the industry is not provided the guidance and time to develop solutions for packet surveillance that intercept only the target's communications, it seems probable that Carnivore, which intercepts all communications in the pathway without the affirmative intervention of the carrier, will be widely implemented.⁷ As noted above, given the absence of industry standards and packet mode capabilities, the FBI is using Carnivore to meet its current needs. In the absence of a blanket waiver, it seems probable that Carnivore will become the default packet interception standard.⁸

Accordingly, CTIA asks the Commission to grant the blanket extension we originally requested one year ago, and by doing so, to establish a path forward that will permit carriers and their vendors to implement their CALEA obligations for packet mode communications in a responsible manner that properly balances the CALEA-mandated assistance capability requirements with protected privacy interests.

Sincerely,

Michael Altschul

cc: Commissioner Gloria Tristani
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Julius Knapp
John Spencer

⁷ Indeed, CTIA has been advised that law enforcement already is contacting wireless carriers to obtain network information to facilitate Carnivore's implementation.

⁸ Given the FBI's use of Carnivore as a substitute for an industry standard, the need for, cost-effectiveness of, or desirability for a manufacturer-provided, carrier-implemented solution may be challenged over time.